

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a
Connecticut corporation,

Civil No. 06-303-AA
O R D E R

Plaintiff,

vs.

ANTHONY PAUL BRENNEKE, an
individual; NSP DEVELOPMENT,
INC., an Oregon corporation;
SHERWOOD H.D. LLC, an Oregon
limited liability company,

Defendants.

AIKEN, Judge:

Plaintiff filed a motion for order of default and judgment (doc. 8) pursuant to Fed. R. Civ. P. 55 against defendants Anthony Paul Brenneke (Brenneke), NSP Development, Inc. (NSP) and Sherwood H.D. LLC (Sherwood). That motion is granted as to defendants NSP Development and Sherwood, and denied as to defendant Brenneke.

There is no dispute or contention that either defendant NSP or Sherwood has plead or otherwise defended under Fed. R. Civ. P. 55(a), therefore the Order of Default is granted as to those two defendants.

1 Regarding defendant Brenneke, the court denies plaintiff's
2 motion for default. Brenneke represents to this court that he
3 was never served with a summons and complaint, and that he
4 intends to appear and defend against plaintiff's lawsuit. The
5 court recognizes that Brenneke's assertion that plaintiff failed
6 to serve him with a summons and complaint is disputed by the
7 plaintiff. Nevertheless, the court will allow defendant Brenneke
8 to proceed and defend himself in this lawsuit. However, no
9 further delay by the defendant will be tolerated. Plaintiff filed
10 this lawsuit on March 6, 2006, nearly three months ago. The
11 purpose of the default provision of Rule 55 is to protect the
12 moving party from any delay and uncertainty caused by an
13 unresponsive party.

14 Defendant is thereby ordered to file his Answer within ten
15 (10) days of the date of this Order. If defendant fails to
16 timely file an Answer, cooperate fully with discovery, and
17 generally comply with the Federal Rules of Civil Procedure as
18 well as this court's Local Rules, the court will consider an
19 immediate renewal of plaintiff's motion for default judgment
20 including consideration of an award of all attorney's fees and
21 costs incurred in prosecuting this lawsuit.

22 Therefore, plaintiff's motion for order of default and
23 judgment (doc. 8) is granted in part and denied in part as stated
24 above. Plaintiff's motion for an award of attorney fees (doc.
25 12) and motion for costs (doc. 14) are denied with leave to
26 renew.

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1 IT IS SO ORDERED.

2 Dated this 4 day of June 2006.

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6 /s/ Ann Aiken
7 Ann Aiken
8 United States District Judge
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